

**U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:17-cv-08153-LAK**

Behar v. U.S. Department of Homeland Security
Assigned to: Judge Lewis A. Kaplan
Related Case: 1:18-cv-07516-LAK
Cause: 05:552 Freedom of Information Act

Date Filed: 10/23/2017
Jury Demand: None
Nature of Suit: 895 Freedom of
Information Act
Jurisdiction: Federal Question

Plaintiff

Richard Behar

represented by **Charles Edward Crain**
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V.

Defendant

**U.S. Department of Homeland
Security**

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Date Filed	#	Docket Text
10/23/2017	<u>1</u>	COMPLAINT against U.S. Department of Homeland Security. (Filing Fee \$ 400.00, Receipt Number 0208-14275320) Document filed by Richard Behar. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D)(Langford, John) (Entered: 10/23/2017)

10/23/2017	<u>2</u>	CIVIL COVER SHEET filed. (Langford, John) (Entered: 10/23/2017)
10/23/2017	<u>3</u>	REQUEST FOR ISSUANCE OF SUMMONS as to U.S. Department of Homeland Security, re: <u>1</u> Complaint. Document filed by Richard Behar. (Langford, John) (Entered: 10/23/2017)
10/23/2017		CASE OPENING INITIAL ASSIGNMENT NOTICE: The above-entitled action is assigned to Judge Lewis A. Kaplan. Please download and review the Individual Practices of the assigned District Judge, located at http://nysd.uscourts.gov/judges/District . Attorneys are responsible for providing courtesy copies to judges where their Individual Practices require such. Please download and review the ECF Rules and Instructions, located at http://nysd.uscourts.gov/ecf_filing.php . (sj) (Entered: 10/24/2017)
10/23/2017		Magistrate Judge Katharine H. Parker is so designated. Pursuant to 28 U.S.C. Section 636(c) and Fed. R. Civ. P. 73(b)(1) parties are notified that they may consent to proceed before a United States Magistrate Judge. Parties who wish to consent may access the necessary form at the following link: http://nysd.uscourts.gov/forms.php . (sj) (Entered: 10/24/2017)
10/23/2017		Case Designated ECF. (sj) (Entered: 10/24/2017)
10/23/2017	<u>4</u>	ELECTRONIC SUMMONS ISSUED as to U.S. Department of Homeland Security. (sj) (Entered: 10/24/2017)
10/25/2017	<u>5</u>	AFFIDAVIT OF SERVICE (FOIA CASE) of Summons and Complaint served. U.S. Department of Homeland Security served on 10/25/2017, answer due 11/24/2017. Service was made by Mail. Document filed by Richard Behar. (Langford, John) (Entered: 10/25/2017)
10/26/2017	<u>6</u>	AFFIDAVIT OF SERVICE (FOIA CASE) of Summons and Complaint served. United States Attorney General served on 10/25/2017, answer due 11/24/2017. Service was made by Mail. Document filed by Richard Behar. (Langford, John) (Entered: 10/26/2017)
10/26/2017	<u>7</u>	AFFIDAVIT OF SERVICE (FOIA CASE) of Summons and Complaint served. United States Attorney for the Southern District of New York served on 10/25/2017, answer due 11/24/2017. Service was made by Mail. Document filed by Richard Behar. (Langford, John) (Entered: 10/26/2017)
10/30/2017	<u>8</u>	NOTICE OF APPEARANCE by Sarah Sheive Normand on behalf of U.S. Department of Homeland Security. (Normand, Sarah) (Entered: 10/30/2017)
11/02/2017	<u>9</u>	ORDER RE SCHEDULING AND INITIAL PRETRIAL CONFERENCE: Initial Conference set for 12/5/2017 at 02:30 PM in Courtroom 21B, 500 Pearl Street, New York, NY 10007 before Judge Lewis A. Kaplan; and as further set forth in this Order. (Signed by Judge Lewis A. Kaplan on 11/2/2017) (anc) (Entered: 11/02/2017)
11/17/2017	<u>10</u>	NOTICE OF APPEARANCE by Casey Kyung-Se Lee on behalf of U.S. Department of Homeland Security. (Lee, Casey) (Entered: 11/17/2017)
11/24/2017	<u>11</u>	ANSWER to <u>1</u> Complaint. Document filed by U.S. Department of Homeland Security.(Normand, Sarah) (Entered: 11/24/2017)
12/01/2017	<u>12</u>	JOINT LETTER addressed to Judge Lewis A. Kaplan from Defendant U.S. Department of Homeland Security and Plaintiff Richard Behar dated December 1, 2017 re: Postponing Initial Conference. Document filed by Richard Behar, United States Attorney for the Southern District of New York.(Langford, John) (Entered: 12/01/2017)
12/07/2017	<u>13</u>	NOTICE of Request for Law Student Meenakshi Krishnan to Appear on Behalf of Plaintiff. Document filed by Richard Behar. (Langford, John) (Entered: 12/07/2017)
12/07/2017	<u>14</u>	NOTICE of Request for Law Student Adam Pan to Appear on Behalf of Plaintiff. Document filed by Richard Behar. (Langford, John) (Entered: 12/07/2017)
12/07/2017	<u>15</u>	NOTICE of Request for Law Student Eric Brooks to Appear on Behalf of Plaintiff. Document filed by Richard Behar. (Langford, John) (Entered: 12/07/2017)

01/08/2018	<u>16</u>	SECOND LETTER MOTION to Adjourn Conference addressed to Judge Lewis A. Kaplan from AUSA Sarah S. Normand dated January 8, 2018. Document filed by U.S. Department of Homeland Security.(Normand, Sarah) (Entered: 01/08/2018)
01/09/2018	<u>17</u>	ORDER granting <u>16</u> Letter Motion to Adjourn Conference. Granted. (Signed by Judge Lewis A. Kaplan on 1/9/2018) (mro) (Entered: 01/09/2018)
01/19/2018	<u>18</u>	MEMO ENDORSEMENT: on re: <u>14</u> LAW STUDENT INTERN APPEARANCE FORM, filed by Richard Behar. ENDORSEMENT: I authorize this student: Adam Pan, to appear in court or other proceedings on behalf of the above client, and (b) to prepare documents on behalf of the above client. SO ORDERED. (Signed by Judge Lewis A. Kaplan on 1/19/2018) (ap) Modified on 3/6/2018 (ap). (Entered: 01/19/2018)
01/19/2018	<u>19</u>	MEMO ENDORSEMENT: on re: <u>15</u> LAW STUDENT INTERN APPEARANCE FORM, filed by Richard Behar. ENDORSEMENT: I authorize this student: Eric Brooks, to appear in court or other proceedings on behalf of the above client, and (b) to prepare documents on behalf of the above client. SO ORDERED. (Signed by Judge Lewis A. Kaplan on 1/19/2018) (ap) Modified on 1/23/2018 (ap). Modified on 3/6/2018 (ap). (Entered: 01/19/2018)
01/19/2018	<u>20</u>	MEMO ENDORSEMENT: on re: <u>13</u> LAW STUDENT INTERN APPEARANCE FORM, filed by Richard Behar. ENDORSEMENT: I authorize this student: Meenakshi Krishnan, to appear in court or other proceedings on behalf of the above client, and (b) to prepare documents on behalf of the above client. SO ORDERED. (Signed by Judge Lewis A. Kaplan on 1/19/2018) (ap) Modified on 3/6/2018 (ap). (Entered: 01/19/2018)
01/29/2018	<u>21</u>	THIRD LETTER MOTION to Adjourn Conference addressed to Judge Lewis A. Kaplan from Counsel for Plaintiff John Langford dated January 29, 2018. Document filed by Richard Behar.(Langford, John) (Entered: 01/29/2018)
02/14/2018	<u>22</u>	FOURTH LETTER MOTION to Adjourn Conference addressed to Judge Lewis A. Kaplan from Counsel for Plaintiff John Langford dated February 14, 2018. Document filed by Richard Behar.(Langford, John) (Entered: 02/14/2018)
02/21/2018	<u>23</u>	JOINT STIPULATION AND ORDER: IT IS HEREBY STIPULATED AND AGREED, by and between plaintiff Richard Behar and the Secret Service, a component of defendant DHS, and subject to endorsement by the Court, that: The Secret Service shall conduct a search of the Email Set for the terms or names on Appendix A attached hereto, and shall review any emails captured by that search to identify any records responsive to the FOIA Request. From the Narrowed Email Set, the Secret Service shall review: each email between November 1, 2016, and November 8, 2016, between December 5, 2016, and December 12, 2016, and between January 14, 2017, and January 21, 2017, to identify any records responsive to the FOIA Request; each email dated between April 21, 2016, and April 28, 2016, to identify any records responsive to the FOIA Request; each email dated between July 11, 2016, and July 28, 2016 (the weeks before, including, and after the Republican National Convention), to identify any records responsive to the FOIA Request; and all emails containing the term "visitor." The Secret Service shall conduct the searches and review described in paragraphs 1 and 2 on a rolling basis, and shall make best efforts to review at least 1000 individual emails, including any attachments, per month until the review is completed; and as further set forth herein. SO ORDERED. (Signed by Judge Lewis A. Kaplan on 2/21/2018) (anc) (Entered: 02/22/2018)
08/15/2018	<u>24</u>	LETTER addressed to Judge Lewis A. Kaplan from Sarah S. Normand and John Langford dated 08/15/2018 re: Joint Status Report and Proposed Briefing Schedule. Document filed by U.S. Department of Homeland Security.(Normand, Sarah) (Entered: 08/15/2018)
09/25/2018	<u>25</u>	LETTER addressed to Judge Lewis A. Kaplan from Sarah S. Normand and John Langford dated 9/25/2018 re: Proposed Briefing Schedule. Document filed by Richard Behar.(Langford, John) (Entered: 09/25/2018)
10/01/2018	<u>26</u>	MEMO ENDORSEMENT on re: (25 in 1:17-cv-08153-LAK) Letter filed by Richard Behar. ENDORSEMENT: Granted. SO ORDERED. (Cross Motions due by 10/31/2018, Motions due by 10/3/2018, Responses due by 10/31/2018, Replies due by 11/21/2018.) (Signed by Judge Lewis A. Kaplan on 9/30/2018) (jca) (Entered: 10/01/2018)

10/03/2018	<u>27</u>	MOTION for Summary Judgment . Document filed by U.S. Department of Homeland Security. Responses due by 10/31/2018(Normand, Sarah) (Entered: 10/03/2018)
10/03/2018	<u>28</u>	DECLARATION of Kim E. Campbell in Support re: <u>27</u> MOTION for Summary Judgment .. Document filed by U.S. Department of Homeland Security. (Normand, Sarah) (Entered: 10/03/2018)
10/03/2018	<u>29</u>	MEMORANDUM OF LAW in Support re: <u>27</u> MOTION for Summary Judgment .. Document filed by U.S. Department of Homeland Security. (Normand, Sarah) (Entered: 10/03/2018)
10/31/2018	<u>30</u>	CROSS MOTION for Summary Judgment by Plaintiff Richard Behar. Document filed by Richard Behar. Responses due by 11/21/2018(Langford, John) (Entered: 10/31/2018)
10/31/2018	<u>31</u>	MEMORANDUM OF LAW in Support re: <u>30</u> CROSS MOTION for Summary Judgment by Plaintiff Richard Behar. . Document filed by Richard Behar. (Langford, John) (Entered: 10/31/2018)
10/31/2018	<u>32</u>	FILING ERROR – DEFICIENT DOCKET ENTRY – MEMORANDUM OF LAW in Support re: <u>30</u> CROSS MOTION for Summary Judgment by Plaintiff Richard Behar. . Document filed by Richard Behar. (Attachments: # <u>1</u> Rule 56.1 Statement of Material Facts, # <u>2</u> Text of Proposed Order)(Langford, John) Modified on 11/1/2018 (ldi). (Entered: 10/31/2018)
10/31/2018	<u>33</u>	FILING ERROR – DEFICIENT DOCKET ENTRY (SEE DOCUMENT #36) – DECLARATION of John Langford in Support re: <u>30</u> CROSS MOTION for Summary Judgment by Plaintiff Richard Behar.. Document filed by Richard Behar. (Attachments: # <u>1</u> Exhibit A-Z, # <u>2</u> Exhibit AA-ZZ, # <u>3</u> Exhibit AAA-ZZZ, # <u>4</u> Exhibit AAAA-III)(Langford, John) Modified on 11/1/2018 (ldi). (Entered: 10/31/2018)
10/31/2018	<u>34</u>	MEMORANDUM OF LAW in Opposition re: <u>27</u> MOTION for Summary Judgment .. Document filed by Richard Behar. (Langford, John) (Entered: 10/31/2018)
11/01/2018	<u>35</u>	RULE 56.1 STATEMENT. Document filed by Richard Behar. (Langford, John) (Entered: 11/01/2018)
11/01/2018	<u>36</u>	DECLARATION of John Langford in Support re: <u>30</u> CROSS MOTION for Summary Judgment by Plaintiff Richard Behar.. Document filed by Richard Behar. (Attachments: # <u>1</u> Exhibit A-Z, # <u>2</u> Exhibit AA-ZZ, # <u>3</u> Exhibit AAA-ZZZ, # <u>4</u> Exhibit AAAA-III)(Langford, John) (Entered: 11/01/2018)
11/01/2018	<u>37</u>	PROPOSED ORDER. Document filed by Richard Behar. Related Document Number: <u>30</u> . (Langford, John) Proposed Order to be reviewed by Clerk's Office staff. (Entered: 11/01/2018)
11/01/2018		***NOTICE TO COURT REGARDING PROPOSED ORDER. Document No. <u>37</u> Proposed Order was reviewed and approved as to form. (dt) (Entered: 11/01/2018)
11/16/2018	<u>38</u>	LETTER MOTION for Extension of Time to file Reply and Opposition to Plaintiff's Cross-Motion for Summary Judgment addressed to Judge Lewis A. Kaplan from AUSA Sarah S. Normand dated November 16, 2018. Document filed by U.S. Department of Homeland Security. (Attachments: # <u>1</u> Text of Proposed Order)(Normand, Sarah) (Entered: 11/16/2018)
11/19/2018	<u>39</u>	JOINT STIPULATION AND ORDER: IT IS HEREBY STIPULATED AND AGREED, by and between plaintiff and the government, that: 1. The Secret Service shall file its combined reply and opposition to plaintiff's cross-motion by November 28, 2018, and Plaintiff shall file his reply in further support of his cross-motion by December 24, 2018. SO ORDERED. (Responses due by 11/28/2018, Replies due by 12/24/2018.) (Signed by Judge Lewis A. Kaplan on 11/19/2018) (jca) (Entered: 11/19/2018)
11/28/2018	<u>40</u>	REPLY MEMORANDUM OF LAW in Opposition re: <u>30</u> CROSS MOTION for Summary Judgment by Plaintiff Richard Behar., <u>27</u> MOTION for Summary Judgment .. Document filed by U.S. Department of Homeland Security. (Normand, Sarah) (Entered: 11/28/2018)

11/28/2018	<u>41</u>	DECLARATION of AUSA Sarah S. Normand in Opposition re: <u>30</u> CROSS MOTION for Summary Judgment by <i>Plaintiff Richard Behar.</i> , <u>27</u> MOTION for Summary Judgment .. Document filed by U.S. Department of Homeland Security. (Attachments: # <u>1</u> Exhibit A: Declaration filed in Doyle v. DHS, # <u>2</u> Exhibit B: Plaintiff's Third FOIA Request, # <u>3</u> Exhibit C: February 21, 2018 Joint Stipulation and Order, # <u>4</u> Exhibit D: USSS Letters dated August 24, 2018, # <u>5</u> Exhibit E: USSS Letters dated August 24, 2018)(Normand, Sarah) (Entered: 11/28/2018)
11/28/2018	<u>42</u>	RESPONSE in Opposition to Motion re: <u>30</u> CROSS MOTION for Summary Judgment by <i>Plaintiff Richard Behar. Defendant's Response to Plaintiff's Rule 56.1 Statement.</i> Document filed by U.S. Department of Homeland Security. (Normand, Sarah) (Entered: 11/28/2018)
12/21/2018	<u>43</u>	REPLY MEMORANDUM OF LAW in Support re: <u>30</u> CROSS MOTION for Summary Judgment by <i>Plaintiff Richard Behar.</i> . Document filed by Richard Behar. (Langford, John) (Entered: 12/22/2018)
12/27/2018	<u>44</u>	STANDING ORDER M10–468: The United States Attorney's Office shall notify the Court immediately upon the restoration of Department of Justice funding. (As further set forth in this Order.) (Signed by Judge Colleen McMahon on 12/27/2018) (mro) (Entered: 01/02/2019)
12/27/2018		***DELETED DOCUMENT. Deleted document number <u>45</u> STANDING ORDER M10–468. The document was incorrectly filed in this case. (yv) (Entered: 01/07/2019)
03/20/2019	<u>45</u>	FILING ERROR – DEFICIENT DOCKET ENTRY – MOTION for Charles Crain to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC–16533981. Motion and supporting papers to be reviewed by Clerk's Office staff. Document filed by Richard Behar. (Attachments: # <u>1</u> Affidavit in support of order for admission Pro Hac Vice, # <u>2</u> State bar of California certificate of standing, # <u>3</u> Proposed Order)(Crain, Charles) Modified on 3/21/2019 (wb). (Entered: 03/20/2019)
03/21/2019		>>>NOTICE REGARDING DEFICIENT MOTION TO APPEAR PRO HAC VICE. Notice to RE–FILE Document No. <u>45</u> MOTION for Charles Crain to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC–16533981. Motion and supporting papers to be reviewed by Clerk's Office staff... The filing is deficient for the following reason(s): missing Certificate of Good Standing from Supreme Court of California;. Re–file the motion as a Motion to Appear Pro Hac Vice – attach the correct signed PDF – select the correct named filer/filers – attach valid Certificates of Good Standing issued within the past 30 days – attach Proposed Order.. (wb) (Entered: 03/21/2019)
05/31/2019	<u>46</u>	MOTION for Charles Crain to Appear Pro Hac Vice . Motion and supporting papers to be reviewed by Clerk's Office staff. Document filed by Richard Behar. (Attachments: # <u>1</u> Affidavit in support of order for admission Pro Hac Vice, # <u>2</u> Certificate of the Clerk of the Supreme Court of the State of California, # <u>3</u> Proposed order for admission Pro Hac Vice)(Crain, Charles) (Entered: 05/31/2019)
05/31/2019		>>>NOTICE REGARDING PRO HAC VICE MOTION. Regarding Document No. <u>46</u> MOTION for Charles Crain to Appear Pro Hac Vice . Motion and supporting papers to be reviewed by Clerk's Office staff.. The document has been reviewed and there are no deficiencies. (jc) (Entered: 05/31/2019)
06/13/2019	<u>47</u>	ORDER FOR ADMISSION PRO HAC VICE granting <u>46</u> Motion for Charles Crain to Appear Pro Hac Vice. (Signed by Judge Lewis A. Kaplan on 6/10/2019) (jca) (Entered: 06/13/2019)
06/17/2019	<u>48</u>	MEMO ENDORSEMENT on re: (46 in 1:17–cv–08153–LAK) MOTION for Charles Crain to Appear Pro Hac Vice. ENDORSEMENT: Granted. SO ORDERED. (Signed by Judge Lewis A. Kaplan on 6/17/2019) (jca) (Entered: 06/17/2019)
08/15/2019	<u>49</u>	MEMORANDUM OPINION re: (30 in 1:17–cv–08153–LAK) CROSS MOTION for Summary Judgment by <i>Plaintiff Richard Behar.</i> filed by Richard Behar, (27 in 1:17–cv–08153–LAK) MOTION for Summary Judgment . filed by U.S. Department of Homeland Security, (12 in 1:18–cv–07516–LAK) MOTION for Summary Judgment . filed by Department of Homeland Security. For the foregoing reasons, defendant's motions for summary judgment [1 7–cv–8153, DI 27 and 18–cv–7516, DI

[12] are granted to the extent that plaintiffs claims for disclosure of records reflecting names and other information pertaining to law enforcement personnel are dismissed and denied in all other respects. Plaintiffs cross motion [17-cv-8153, DI 30] is denied in all respects. This ruling is without prejudice to defendant renewing its motion, on or before October 15, 2019, on the basis of revised Vaughn submissions taking into account the deficiencies identified above and without prejudice also to a renewed cross motion by plaintiff taking into account defendant's revised submissions. Any such cross motion shall be filed on or before November 15, 2019. The Clerk shall terminate the pending motions. SO ORDERED. (Motions due by 10/15/2019., Responses due by 11/15/2019) (Signed by Judge Lewis A. Kaplan on 8/15/2019) (kv) (Entered: 08/15/2019)